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Supreme Court, U.S.
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In The

Supreme Court

of the United States

October Term 1996

CHARLES ROBB,

Petitioner,

v.

THE MISSISSIPPI BAR,

Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of Mississippi.

BRIEF OF RESPONDENT IN OPPOSITION TO A PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the governing body of The Mississippi Bar, the Board of Bar Commissioners, in a state governed disciplinary proceeding can direct its General Counsel to file for an appeal of a decision of a Mississippi Supreme Court appointed Complaint Tribunal without attaching a copy of its directive to said General Counsel?

2. Can the United States Supreme Court overrule a Mississippi Supreme Court rule that the Mississippi Supreme Court has exclusive and inherent jurisdiction over attorney disciplinary matters which includes a right to review attorney disciplinary matters "de novo" when they come before the Mississippi Supreme Court?

PARTIES BELOW

The Mississippi Bar

R. Charles Robb

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RESPONSE TO PETITION FOR WRIT OF CERTIORARI

Petitioner, R. Charles Robb, prays that a Writ of Certiorari be issued to review the Judgment of the Supreme Court of Mississippi in this matter but he has not presented persuasive reasons why certiorari should be granted.

OPINION BELOW

The ruling of the Mississippi Supreme Court from which the Petitioner seeks certiorari is included in the case styled *The Mississippi Bar v. R. Charles Robb,* (App., infra, 1a-17a) dated June 20, 1996. The Petitioner's Motion for Rehearing was denied by the Mississippi

Supreme Court on September 19, 1996 (App., infra, 27a, 28a).

In its decision, the Mississippi Supreme Court reversed the public reprimand imposed upon the Petitioner by a Mississippi Supreme Court appointed Complaint Tribunal. However in its decision, the Mississippi Supreme Court concluded its ruling with the following paragraph:

> Before the Complaint Tribunal and this Court, Robb has sought at every point to blame others for his acts of deceit. His failure to furnish obvious information to counsel opposite and his deceit in arranging for the arrest of Benefield merits a suspension from the practice of law. Further, his acts following the arrest of Benefield bring disfavor upon the legal

> profession and must be considered in imposing sanctions. Finally, his demeanor and attitude before this Court and his apparent disregard for the rights of others, substantiate this Court's opinion that Robb should be suspended from the practice of law. Therefore, we hereby find that R. Charles Robb should be suspended from the practice of law for a period of six (6) months.

SUMMARY OF THE ARGUMENT

The Petitioner herein submits that he has been denied due process of law by stating that the Mississippi Supreme Court entered the Order suspending him without "the requisite subject matter jurisdiction" to hear and

consider the Mississippi Bar's "appeal" of the Complaint Tribunal's decision to only publicly reprimand him for his acts of deceit. Petitioner further submits that he was denied certain procedural due process rights afforded him by the Fifth and Fourteenth Amendments of the Constitution of the United States of America.

Petitioner also submits that this Court's jurisdiction is invoked under 28 U.S.C. §1257 (a) and 2101 (c) and his Petition is submitted for consideration pursuant to Rules 10.1 (b) and 10.1 (c), Rules of the United States Supreme Court. In response, the Mississippi Bar submits the Petitioner has failed to satisfy such jurisdictional requirements.

United States Supreme Court Rule 10 sets forth the grounds which must be established in

order for a Petition for Writ of Certiorari to be granted:

> A review on writ of certiorari is not a matter of right, but of judicial discretion. A Petition for Writ of Certiorari will be granted only when there are special and important reasons therefore.

In the case sub judice there simply does not exist any "special and important reason" to grant Petitioner's request for a writ. Instead, this action arises out of an routine attorney disciplinary case. Historically, attorney disciplinary proceedings have been left largely to the states. Therefore, in order for the Court to invade the province of each state to exercise its inherent and exclusive jurisdiction over attorney

disciplinary matters, a fundamental freedom must exist. [1] Otherwise each state is free to develop its own system of attorney regulation. As such, this case does not present any state or federal constitutional or statutory question nor does it present any question upon which there is a conflict in the court of appeals or the district courts. In addition, this case does not present an important issue of federal law nor does it present a conflict between a decision of the court of appeals and the Mississippi Supreme Court regarding a general non-federal matter.

To justify a grant of certiorari, the special and important requirement must be more than "academic" or "episodic". The issues must reach constitutional dimensions. *Rice v. Sioux*

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[1] For example, freedom of speech. See *Bates v. State Bar of Arizona*, 433 U.S. 350 (1977).

City Memorial Park Cemetery, 349 U.S. 70 (1955). This Court does not sit to satisfy a scholarly interest. . . nor does it sit for the benefit of the particular litigant". *Rice*, 349 U.S. at 4 (citing *Mangum Import v. Cody*, 262 U.S. 159, 163 (1923). As the Court *in Layne and Bowler Corporation v. Western Well Works, Inc.*, 261 U.S. 387 (1923) stated:

"It is very important that we be consistent in not granting the writ of certiorari except in cases involving principles the settlement of which is of importance to the public as distinguished from that of the parties and in cases where there is a real and embracing conflict of opinion and authority between the circuit courts of appeal". *Layne and Bowler Corporation*, 261 U.S. at 393.

Therefore, the instant Petition does not deserve to be sustained.

STATEMENT OF THE CASE

The Petitioner submits that the Mississippi Supreme Court denied him due process in a de novo proceeding when it did not require the Mississippi Bar to produce a copy of its minutes or other evidence that the Bar authorized its General Counsel to pursue an appeal to the Mississippi Supreme Court of the Public Reprimand imposed upon Mr. Robb by the Mississippi Supreme Court appointed Complaint Tribunal which was based upon Mr. Robb's deceitful conduct. In addition, the Petitioner alleges that the Mississippi Supreme Court

further denied him due process when it considered the actions he took, in aggravation of the discipline to be imposed upon him, after he committed his deceitful conduct. Both arguments were presented to the Mississippi Supreme Court by the Petitioner in his Motion for Rehearing which were summarily dismissed by the Mississippi Supreme Court.

REASONS FOR NOT GRANTING THE PETITON FOR WRIT OF CERTIORARI

RESPONSE TO PROPOSITION

I.

THE MISSISSIPPI SUPREME COURT HAS INHERENT AND EXCLUSIVE JURISDICTION OVER ATTORNEY DISCIPLINARY MATTERS.

In the Motion for Rehearing that the Petitioner filed with the Mississippi Supreme Court, the Petitioner admitted that he raised for the first time the issue that the Mississippi Supreme Court did not have jurisdiction to hear his disciplinary case, de novo, because the "brief of the (Mississippi) Bar did not state that a decision" to appeal the Tribunal's findings and decision had been made by the Bar's governing board. Mr. Robb further submits that the Bar did (not) attach to its Notice of Appeal the minutes of the Board meeting whereat the matter was discussed.

In support of the Petitioner's position, he makes four arguments. First, Rule 9, Mississippi Rules of Discipline, requires the Bar's governing body "to determine whether

General Counsel shall take an appeal on behalf of the Bar".

Second, the Bar failed to file a timely response to his Motion for Rehearing before the Mississippi Supreme Court.

Third, the Mississippi Supreme Court failed to comply with the requirements of *In the Matter of Thalheim*, 853 F.2d 383 (CA 5 1988), which requires the disciplinary authority involved to strictly adhere to its own rules.

Fourth, the Mississippi Supreme Court failed to comply with the requirements of *The Mississippi Bar v. Attorney G*, 630 So.2d 344, (Miss. 1994), which requires the Mississippi Bar to produce a certified copy of the Judgment of Conviction for summary disposition when the rule of procedure requires the production of

such certified copy of Judgment of Conviction to prove that a lawyer has been adjudged guilty of a criminal offense.

The Mississippi Bar will respond to the points of law raised by the Petitioner in the order he presented them.

First, the Petitioner did not and cannot cite to this Court any Mississippi Rule of Discipline which requires the Bar to present to the Mississippi Supreme Court any evidence, including a copy of the Board's minutes, that the Bar's governing body authorized and directed the Bar's General Counsel to appeal the Tribunal's imposition of a Public Reprimand upon the Petitioner for his deceitful conduct. The Rule Petitioner cites in his Petition for Writ of Certiorari as support for his position, Rule 9

of the Mississippi Rules of Discipline, does not place such a requirement upon the Bar or its General Counsel. If the Petitioner had any evidence that the Bar's General Counsel was acting independent of the Bar's governing body when an appeal was taken of the Tribunal's decision, he should have presented it to the Mississippi Supreme Court. However, he presented no such evidence or proof.

Second, the Bar's Response to the Petitioner's Motion for Rehearing was due, according to the Mississippi Supreme Court, on August 8, 1996 but was not filed until August 9, 1996. The Mississippi Supreme Court sustained the Petitioner's Motion to Strike the Bar's Response to Petitioner's Motion for Rehearing

but still overruled the Petitioner's Motion for Rehearing without comment. [2]

Third, the Mississippi Supreme Court strictly abided by its own rules since such rules do not require the Bar to provide any "evidence" that the Bar's General Counsel was

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[2] In his Petition for Writ of Certiorari, the Petitioner makes the following statement (at footnote 2 p. 10): "Mr. Robb filed a Motion for Rehearing on July 8, 1996. The Mississippi Bar's response was due July 15, 1996. On July 29, 1996, the Court caused its court administrator to notice the Mississippi Bar it had ten days within which to file a response to the Motion for Rehearing See Appendix ??. Such response was due on August 8, 1996 but was not filed until August 9, 1996."

The Petitioner, Mr. Robb, omitted a very important fact in his recitation of the "timeline" quoted above. Rule 40, Mississippi Rules of Appellate Procedure, entitled "Motion for Rehearing " reads as follows:

Rule 40. Motion for Rehearing (a) . . within seven days after the filing of a Motion for Rehearing, any other party may, but need not , (underlining added) file and serve a written response in opposition to the Petition. Failure to file a response within this time period waives the right to respond but does not confess the arguments made in the Petition.

Consequently, Mr. Robb is correct that the Bar's response to his Petition for Rehearing, if it had initially chosen to file a response, was due by July 15, 1996. Instead, the Bar chose not to file a response. Nevertheless, the Court requested the Bar to file a response but struck the Response when it ruled it had been filed one day late. Regardless, Mr. Robb's Motion for Rehearing was denied without comment.

authorized and directed to appeal the Complaint Tribunal's decision. Again, Mr. Robb had the opportunity to present proof to the Mississippi Supreme Court that the Mississippi Bar's General Counsel did not have any such authority yet he did not provide the Court any evidence or proof in support of his position.

Fourth, the Petitioner's reliance upon *The Mississippi Bar v. Attorney G*, supra, as authority for his position is misplaced. The specific rule involved in that case reads, in part, as follows:

> Rule 6. Suspensions and Disbarments Based on Other Proceedings. Rule 6 (a) whenever any attorney subject to the disciplinary jurisdiction of the Court shall be convicted in any court of any state or in any federal court, or enter a

> plea of guilty or a plea of nolo contendere therein, of any felony (other than manslaughter) or of any misdemeanor involving fraud, dishonesty, deceit, misrepresentation, or willful failure to account for money or property of a client, a certified copy of the judgment of conviction shall be presented to the Court by Complaint Counsel and shall be conclusive evidence thereof. . .

Consequently, since *Attorney G* had only pled guilty and no "judgment of conviction" had been entered, the Mississippi Supreme Court ruled that the Bar had failed to produce the document entitled "judgment of conviction" and, consequently, had failed to strictly comply with the applicable rule. Therefore, the

prosecution of *Attorney G*, as alleged under Rule 6, but not under Rule 8, was abated.

There is no rule of procedure in Mississippi's disciplinary process requiring the attachment of the directive given by the Board of Bar Commissioners to the Bar's General Counsel to appeal the Public Reprimand issued to Mr. Robb by the Complaint Tribunal. Likewise, there was no requirement that the Board's minutes be attached to the Notice of Appeal that was filed.

In conclusion, in Mississippi, the Mississippi Supreme Court has exclusive and inherent jurisdiction over bar disciplinary matters.[3] The Petitioner did not present any proof that the Bar was obligated to attach a

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[3] See Rule 1, Mississippi Rules of Discipline; *Foote v. Mississippi State Bar Association*, 517 So.2d 561 (Miss. 1987); *Watkins v. Mississippi Bar*, 589 So.2d 660, (Miss. 1991)..

copy of any document to prove that it had given it's General Counsel a directive to appeal the Complaint Tribunal's decision in order that the Mississippi Supreme Court could conduct its "de novo" review of an attorney disciplinary case.

II.

THE MISSISSIPPI SUPREME COURT CONDUCTED PROPER DE NOVO REVIEW OF THE TRIBUNAL'S RULING.

In this assignment of error, the Petitioner is not asking this Court to condemn the actions of the Mississippi Bar but, instead, the procedure utilized by the Mississippi Supreme Court. The Petitioner asks this Court to put restraints on the Mississippi Supreme Court and the exercise of its exclusive and inherent

jurisdiction over lawyers who practice law in the State of Mississippi. In addition, Petitioner characterizes the Mississippi Supreme Court's jurisdiction to conduct "de novo" review of attorney disciplinary cases as "unfettered". In fact, Petitioner would have this Court declare the procedure utilized by the Mississippi Supreme Court in the instant case involving himself as "null and void" and "remand for the entry of the Opinion and Judgment of the hearing tribunal" (Petition p. 17). And what is Petitioner's basis for this request? The basis is the Mississippi Supreme Court's decision to suspend Mr. Robb for six (6) months from the practice of law because it differed from the Public Reprimand imposed upon him by the Complaint Tribunal.

In support of his position, the Petitioner cites a criminal case, *North Carolina v. Pearce*, 395 U.S. 711, 724-726 (1969), even though he submits that Bar disciplinary proceedings are only quasi-criminal in nature. (Pet. p. 20-21). *Culpepper v. Mississippi State Bar*, 588 So.2d 413 (Miss. 1991).

The Mississippi Supreme Court has rejected Petitioner's "enhanced punishment" argument *in Myers v. Mississippi State Bar*, 180 So.2d 1080 (Miss. 1986) cert. denied 107 S.Ct. 64, 479 U.S. 813, 93 L.Ed. 2d 23.

Nevertheless, in *Myers*, the Mississippi Supreme Court held that even if *Pearce* applied, the sanction imposed was based upon a record which more fully developed the nature of Mr.

Myers' conduct. The same situation exists with respect to Mr. Robb's case.

Finally, the evidence upon which the Petitioner submits was not before the Complaint Tribunal when it imposed it's Public Reprimand, specifically, the copy of the court file where the Petitioner sued his former client based upon the conduct for which the Petitioner was suspended by the Mississippi Supreme Court, was produced by the Petitioner, not the Mississippi Bar, without objection, following a Mississippi Supreme Court Judge's request for the production of such file which was made during oral argument before the Mississippi Supreme Court (App. 50a). The Petitioner had the opportunity to object when he was before the Mississippi Supreme Court but he didn't. He

waived his right to object. Therefore, he cannot raise such objection before this Court, in this proceeding.

III.

CUMULATIVE JUDICAL ACTION WAS APPRPORIATE.

The balance of Mr. Robb's arguments are without merit. Mr. Robb does not and cannot provide any authority for the premise that the Mississippi Supreme Court issues, or is required to issue, mandates in disciplinary cases as it does in civil cases. There are no "double punishment" or "suspension before finality of decision" issues before this Court. Nor is there

any evidence that the Mississippi Supreme Court had a "retaliatory motive within" itself when it exercised its inherent and exclusive jurisdiction over attorney disciplinary matters to conduct a de novo review of the Complaint Tribunal's Public Reprimand of Mr. Robb and, instead, suspended him for six (6) months

CONCLUSION

The purposes of the Mississippi disciplinary system are as follows:

> First, to punish the wrongdoer. Second, to deter similar misconduct. Third, to preserve the dignity and reputation of the legal profession. Fourth, to protect the public. *Mathes v. Mississippi Bar*, 620 So2d 1213, 1222 (Miss. 1993).

In *Mathes*, the Mississippi Supreme Court said the imposition of sanctions has a definite role in reinforcing the confidence of the general public in the legal profession's ability to govern itself. This role is very important regarding attorney disciplinary proceedings because the legal profession assumes the responsibility of governing its members. Therefore, public confidence, faith and integrity in the Bar is dependent upon a willingness to impose appropriate sanctions on its members who have violated the various Codes of Professional Responsibility. 620 So.2d at 1222.

In Mississippi, it is a "privilege", not a property right to practice law. Furthermore, the privilege to practice law is a "revocable"

privilege. *Levi v. Mississippi State Bar*, 436 So2d 781 (Miss. 1983).

In this case, the majority of the issues included in the present Petition for Writ of Certiorari have previously been presented to the Mississippi Supreme Court by this Petitioner and were rejected. Furthermore, there is no special or important reason to grant the instant writ. The instant Petition is "fact specific", as such, this case simply does not present any federal or state constitutional or statutory questions nor does it present any questions upon which there is a conflict in the court of appeals or with the district courts.

The Petitioner was afforded due process of law. He was sanctioned for failing to follow a court rule and his several acts of deceit. That

decision was for the Mississippi Supreme Court to make and it made it. Therefore, this Court should not get involved in a state disciplinary proceeding unless the requirements of Rule 10 have been met. They haven't.

Respectfully submitted,

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